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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: LIN 03 046 51002 Office: NEBRASKA SERVICE CENTER

Date: NOV 26 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dance studio. The beneficiary is a dance instructor and competitor. The petitioner seeks an extension of the beneficiary's stay in the United States in O-1 classification, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to continue to employ her in the United States as a "dance instructor/national dance competitor" for a period of one year at an annual salary of \$20,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in athletics.

On appeal, counsel for the petitioner submitted a brief and additional documentation. Counsel asserts that the director erred in applying the standard for aliens of extraordinary ability in athletics rather than the lesser standard for artists of distinction.

The director noted that the International Olympic Committee has formally recognized DanceSport as a sport for inclusion in the Olympic games. DanceSport is another name for competitive ballroom dancing. DanceSport may be included in the 2008 Olympic games. A letter from the petitioner's counsel states that the beneficiaries will be training students for such Olympic competitions. The inclusion of DanceSport in the Olympics definitively is a clear indication that DanceSport or ballroom dance has evolved into a form of athletic competition. The AAO concurs that the beneficiary should be held to the more stringent requirements for aliens of extraordinary ability in athletics rather than to those for artists.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary

ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

8 C.F.R. §214.2(o) (5) (i) (A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which

could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary in this matter is a 33-year-old native of the former Soviet Union and a citizen of Estonia. According to counsel for the petitioner, the beneficiary has been dancing professionally since 1994. She last entered the United States as a B-2 nonimmigrant visitor for pleasure on July 7, 1998.

Another petitioner filed an O-1 petition on behalf of the beneficiary that was approved in March 1999 and revoked in October 1999. The petitioner in this case filed a petition on the beneficiary's behalf that was approved. The same petitioner filed a request for an extension of O-1 status on the beneficiary's behalf, which was approved then revoked.¹ The instant appeal relates to the petitioner's third O-1 petition filed on behalf of the beneficiary.

After reviewing the evidence submitted in support of the petition, the director found the evidence insufficient to establish that the beneficiary has extraordinary ability in athletics.

There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner asserts that the beneficiary has competed twice at World Championships representing her native Estonia in 1994 and 1995. The petitioner has not indicated whether the beneficiary placed in these competitions. More importantly, the petitioner failed to establish the significance of these competitions. Counsel asserts that the beneficiary established her extraordinary ability by her participating in the World Championships. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As evidence that the beneficiary satisfies criterion number one, the petitioner submits evidence that the beneficiary has won several national and international championships in ballroom dance by placing 4th in the Ohio Star Ball and placing 6th in the United States National Professional Standard Championships Standard Division and 1st in the Rising Star Division.²

¹ LIN 99 033 51669, LIN 00 244 56123, and LIN 03 046 51002.

² Provo, Utah, March 7-9, 2002. The Rising Star Division is less prestigious than the Professional Division.

The beneficiary has won the following additional awards:

1999 Twin Cities Open³ DanceSport Competition (1st Place International Standard); Dancers Cup Circuit (1st Place Rising Star, 3rd Place Open); California Open Dance Sport Championships (2nd Place Rising Star, 5th Place Open); Indiana Challenge (1st Place Open); Heritage Classic (3rd Place Rising Star); St. Louis Star Ball (1st Place Rising Star, 1st Place Open); 1999 Wisconsin State Dance Sport Championships (2nd Place Open International Standard); Atlanta Open DanceSport Championship (1st Place Rising Star, 2nd Place); Nevada Star Ball (1st Place Rising Star, 3rd Place Open); 2001 Capital DanceSport Championship (1st Place Rising Star, 3rd Place Open); Yankee Classic Dance Sport (1st Place Open); First Coast Classic Championships (1st Place Open); 35th Chicago Harvest Moon Ball Championships (2nd Place in Professional Rising Star Open Standard); 38th Chicago Harvest Moon Ball Championships (1st Place Open); Detroit Dancesport Open (1st Place in Open International Standard); 1998 Michigan Dancesport Festival Competition (2nd place in Rising Star and 3rd place in Open); Detroit Dance Sport Open (1st International Standard); 2001 Wisconsin State Dancesport Championship (2nd place in open). According to the evidence on the record, the beneficiary placed in numerous other state competitions.

In review, the evidence on the record demonstrates that only one of the beneficiary's competitions, the United States National Professional Standard Championship, is national in scope. (See letter of Lee Wakefield dated June 4, 2002, National Dance Council of America.) As noted above, the beneficiary placed 6th in the standard division and 1st in the rising star division. A 6th place win, while notable, is not an award for excellence in the field of endeavor. The rising star award indicates that the beneficiary has potential in the field, but was not awarded based on competition with established dancers. The petitioner has failed to establish the significance of the beneficiary's awards. The beneficiary does not satisfy this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

For criterion number two, while the beneficiary is a member of the Imperial Society of Teachers of Dancing (ISTD), the Professional Dancer's Federation, and the National Dance Council of America, the petitioner failed to establish that these organizations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. The ISTD website indicates that membership is not limited to persons who have outstanding achievements. The beneficiary does not satisfy this criterion.

³ "Open" events mean both amateurs and professionals may compete as opposed to an "amateur" event that bars professionals from competing. A win in an open class is much more highly regarded than a win in an amateur class.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought.

For criterion number three, the petitioner asserts that two trade journals intend to publish articles about the beneficiary in the future. A petitioner must establish eligibility at the time of filing, not at some future date. 8 C.F.R. § 103.2(b)(12).

The petitioner states that the beneficiary has appeared numerous times in *Dance Beat* magazine. The petitioner failed to produce evidence to corroborate this claim.

The petitioner did submit copies of newspaper articles, but the majority of these do not indicate in which publication these articles appeared and thus cannot qualify as major media or major trade publications. Several articles appear to be published in local or regional newspapers. Some are not dated. One article was published in the newsletter of the beneficiary's former employer. The majority of the articles are not about the beneficiary but are reviews of competitions that discuss the performance of all the competitors including the beneficiary. None of these articles establish that the beneficiary has sustained national or international acclaim and has reached the top of her field. The beneficiary does not satisfy this criterion.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.

For criterion number four, the petitioner states that the beneficiary has served as a judge for amateur dance competitions in the United States. The director determined that the petitioner failed to establish that the beneficiary was selected to judge on the basis of her sustained national or international acclaim. The AAO concurs. The petitioner failed to submit any independent evidence as to the basis for the beneficiary's selection as a judge. The beneficiary does not satisfy this criterion.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

No evidence was submitted to meet this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media.

No evidence was submitted to meet this criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

According to the director's denial dated May 19, 2003, no evidence

was submitted to meet this criterion. Yet on appeal, counsel for the petitioner asserts that the Service (CIS) conceded that the beneficiary has a distinguished reputation in the State of Indiana. Counsel further asserts that the beneficiary plays a critical role for the petitioner and quotes her client as saying the beneficiary's reputation "is of extreme value to me as the owner of Indianapolis Ballroom. The [beneficiary and spouse] are absolutely necessary for my business." The petitioner failed to demonstrate that the petitioner has a distinguished reputation and that the beneficiary has been employed in an essential or critical capacity there. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

No evidence was submitted in support of this criterion.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.